

AMENDED IN ASSEMBLY JUNE 23, 2016

AMENDED IN SENATE JUNE 1, 2016

AMENDED IN SENATE MAY 4, 2016

AMENDED IN SENATE APRIL 20, 2016

AMENDED IN SENATE APRIL 4, 2016

**SENATE BILL**

**No. 1177**

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**Introduced by Senator Galgiani**

February 18, 2016

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An act to add Article 14 (commencing with Section 2340) to Chapter 5 of Division 2 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1177, as amended, Galgiani. Physician and Surgeon Health and Wellness Program.

Existing law establishes in the Department of Consumer Affairs the Substance Abuse Coordination Committee, comprised of the executive officers of the department's healing arts boards and a designee of the State Department of Health Care Services. Existing law requires the committee to formulate, by January 1, 2010, uniform and specific standards in specified areas that each healing arts board is required to use in dealing with substance-abusing licensees, whether or not a healing arts board has a formal diversion program.

Existing law, the Medical Practice Act, provides for the licensure and regulation of physicians and surgeons by the Medical Board of California within the department. Existing law requires all moneys paid to and received by the Medical Board of California to be paid into the

State Treasury and credited to the Contingent Fund of the Medical Board of California, which, except for fine and penalty money, is a continuously appropriated fund.

This bill would authorize the board to establish a Physician and Surgeon Health and Wellness Program for the early identification of, and appropriate interventions to support a physician and surgeon in his or her rehabilitation from, substance abuse, as specified. If the board establishes a program, the bill would require the board to contract for the program’s administration with a private~~-third-party~~ 3rd-party independent administering entity meeting certain requirements. The bill would require program participants to enter into an individual agreement with the program that includes, among other things, a requirement to pay expenses related to treatment, monitoring, and laboratory tests, as provided.

This bill would create the Physician and Surgeon Health and Wellness Program Account within the Contingent Fund of the Medical Board of California. The bill would require the board to adopt regulations to determine the appropriate fee for a physician and surgeon to participate in the program, as specified. The bill would require these fees to be deposited in the Physician and Surgeon Health and Wellness Program Account and to be available, upon appropriation by the Legislature, for the support of the program. Subject to appropriation by the Legislature, the bill would authorize the board to use moneys from the Contingent Fund of the Medical Board of California to support the initial costs for the board to establish the program, except the bill would prohibit these moneys from being used to cover any costs for individual physician and surgeon participation in the program.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
 State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Article 14 (commencing with Section 2340) is  
 2 added to Chapter 5 of Division 2 of the Business and Professions  
 3 Code, to read:

4  
 5 Article 14. Physician and Surgeon Health and Wellness Program

6  
 7 2340. (a) The board may establish a Physician and Surgeon  
 8 Health and Wellness Program for the early identification of, and

1 appropriate interventions to support a physician and surgeon in  
2 his or her rehabilitation from, substance abuse to ensure that the  
3 physician and surgeon remains able to practice medicine in a  
4 manner that will not endanger the public health and safety and that  
5 will maintain the integrity of the medical profession. The program,  
6 if established, shall aid a physician and surgeon with substance  
7 abuse issues impacting his or her ability to practice medicine.

8 (b) For the purposes of this article, “program” shall mean the  
9 Physician and Surgeon Health and Wellness Program.

10 (c) If the board establishes a program, the program shall meet  
11 the requirements of this article.

12 2340.2. If the board establishes a program, the program shall  
13 do all of the following:

14 (a) Provide for the education of all licensed physicians and  
15 surgeons with respect to the recognition and prevention of physical,  
16 emotional, and psychological problems.

17 (b) Offer assistance to a physician and surgeon in identifying  
18 substance abuse problems.

19 (c) Evaluate the extent of substance abuse problems and refer  
20 the physician and surgeon to the appropriate treatment by executing  
21 a written agreement with a physician and surgeon participant.

22 (d) Provide for the confidential participation by a physician and  
23 surgeon with substance abuse issues who does not have a restriction  
24 on his or her practice related to those substance abuse issues. *If an*  
25 *investigation of a physician and surgeon occurs after the physician*  
26 *and surgeon has enrolled in the program, the board may inquire*  
27 *of the program whether the physician and surgeon is enrolled in*  
28 *the program.*

29 (e) Comply with the Uniform Standards Regarding  
30 Substance-Abusing Healing Arts Licensees as adopted by the  
31 Substance Abuse Coordination Committee of the Department of  
32 Consumer Affairs pursuant to Section 315.

33 2340.4. (a) If the board establishes a program, the board shall  
34 contract for the program’s administration with a private third-party  
35 independent administering entity pursuant to a request for  
36 proposals. The process for procuring the services for the program  
37 shall be administered by the board pursuant to Article 4  
38 (commencing with Section 10335) of Chapter 2 of Part 2 of  
39 Division 2 of the Public Contract Code. However, Section 10425  
40 of the Public Contract Code shall not apply to this subdivision.

1 (b) The administering entity shall have expertise and experience  
2 in the areas of substance or alcohol abuse in healing arts  
3 professionals.

4 (c) The administering entity shall identify and use a statewide  
5 treatment resource network that includes treatment and screening  
6 programs and support groups and shall establish a process for  
7 evaluating the effectiveness of such programs.

8 (d) The administering entity shall provide counseling and  
9 support for the physician and surgeon and for the family of any  
10 physician and surgeon referred for treatment.

11 (e) The administering entity shall make their services available  
12 to all licensed California physicians and surgeons, including those  
13 who self-refer to the program.

14 (f) The administering entity shall have a system for immediately  
15 reporting a physician and ~~surgeon~~ *surgeon, including, but not*  
16 *limited to, a physician and surgeon* who withdraws or is terminated  
17 from the ~~program~~ *program*, to the board. This system shall ensure  
18 absolute confidentiality in the communication to the board. The  
19 administering entity shall not provide this information to any other  
20 individual or entity unless authorized by the participating physician  
21 and surgeon.

22 (g) The contract entered into pursuant to this section shall also  
23 require the administering entity to do the following:

24 (1) Provide regular communication to the board, including  
25 annual reports to the board with program statistics, including, but  
26 not limited to, the number of participants currently in the program,  
27 the number of participants referred by the board as a condition of  
28 probation, the number of participants who have successfully  
29 completed their agreement period, and the number of participants  
30 terminated from the program. In making reports, the administering  
31 entity shall not disclose any personally identifiable information  
32 relating to any participant.

33 (2) Submit to periodic audits and inspections of all operations,  
34 records, and management related to the program to ensure  
35 compliance with the requirements of this article and its  
36 implementing rules and regulations. Any audit conducted pursuant  
37 to this section shall maintain the confidentiality of all records  
38 reviewed and information obtained in the course of conducting  
39 the audit and shall not disclose any information identifying a  
40 program participant.

1 (h) In the event that the board determines the administering  
2 entity is not in compliance with the requirements of the program  
3 or contract entered into with the board, the board may terminate  
4 the contract.

5 2340.6. (a) A physician and surgeon shall, as a condition of  
6 participation in the program, enter into an individual agreement  
7 with the program and agree to pay expenses related to treatment,  
8 monitoring, laboratory tests, and other activities specified in the  
9 participant's written agreement. The agreement shall include all  
10 of the following:

11 (1) A jointly ~~agreed-upon~~ *agreed-upon* plan and mandatory  
12 conditions and procedures to monitor compliance with the program.

13 (2) Compliance with terms and conditions of treatment and  
14 monitoring.

15 (3) Criteria for program completion.

16 (4) Criteria for termination of a physician and surgeon  
17 participant from the program.

18 (5) Acknowledgment that withdrawal or termination of a  
19 physician and surgeon participant from the program shall be  
20 reported to the board.

21 (6) Acknowledgment that expenses related to treatment,  
22 monitoring, laboratory tests, and other activities specified by the  
23 program shall be paid by the physician and surgeon participant.

24 (b) Any agreement entered into pursuant to this section shall  
25 not be considered a disciplinary action or order by the board and  
26 shall not be disclosed to the board if both of the following apply:

27 (1) The physician and surgeon did not enroll in the program as  
28 a condition of probation or as a result of an action by the board.

29 (2) The physician and surgeon is in compliance with the  
30 conditions and procedures in the agreement.

31 (c) Any oral or written information reported to the board shall  
32 remain confidential and shall not constitute a waiver of any existing  
33 evidentiary privileges under any other provision or rule of law.  
34 However, confidentiality regarding the physician and surgeon's  
35 participation in the program and related records shall not apply if  
36 the board has referred a participant as a condition of probation.

37 (d) Nothing in this section prohibits, requires, or otherwise  
38 affects the discovery or admissibility of evidence in an action by  
39 the board against a physician and surgeon based on acts or  
40 omissions within the course and scope of his or her practice.

1 ~~(e) Any information received, developed, or maintained~~  
2 ~~regarding a physician and surgeon in the program shall not be used~~  
3 ~~for any other purposes.~~

4 ~~(f)~~

5 (e) Participation in the program shall not be a defense to any  
6 disciplinary action that may be taken by the board. This section  
7 does not preclude the board from commencing disciplinary action  
8 against a physician and surgeon who is terminated unsuccessfully  
9 from the program. However, that disciplinary action may not  
10 include as evidence any confidential information unless authorized  
11 by this section.

12 2340.8. (a) The Physician and Surgeon Health and Wellness  
13 Program Account is hereby established within the Contingent Fund  
14 of the Medical Board of California. Any fees collected by the board  
15 pursuant to subdivision (b) shall be deposited in the Physician and  
16 Surgeon Health and Wellness Program Account and shall be  
17 available, upon appropriation by the Legislature, for the support  
18 of the program.

19 (b) The board shall adopt regulations to determine the  
20 appropriate fee that a physician and surgeon participating in the  
21 program shall provide to the board. The fee amount adopted by  
22 the board shall be set at a level sufficient to cover all costs for  
23 participating in the program, including any administrative costs  
24 incurred by the board to administer the program.

25 (c) Subject to appropriation by the Legislature, the board may  
26 use moneys from the Contingent Fund of the Medical Board of  
27 California to support the initial costs for the board to establish the  
28 program under this article, except these moneys shall not be used  
29 to cover any costs for individual physician and surgeon  
30 participation in the program.

31 ~~2340.10. The Administrative Procedure Act (Chapter 3.5~~  
32 ~~(commencing with Section 11340) of Part 1 of Division 3 of Title~~  
33 ~~2 of the Government Code) shall apply to regulations adopted~~  
34 ~~pursuant to this article.~~